

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MINH KHA HOANG PHAN,
Petitioner,
v.
P. CAVELLO,
Respondent.

No. 2:21-cv-2219 TLN CKD P

ORDER AND
FINDINGS AND RECOMMENDATIONS

On March 14, 2022, respondent timely-filed a motion to dismiss petitioner's petition for a writ of habeas corpus. Apparently petitioner never received the motion which resulted in petitioner filing what the court construes as a motion for entry of default judgment on April 31, 2022.

Good cause appearing, the court will order respondent to re-serve the motion to dismiss. Petitioner will be given additional time to respond and then respondent will be given additional time to file a reply. The court will recommend that petitioner's motion for default be denied.

Accordingly, IT IS HEREBY ORDERED that:

1. Respondent shall re-serve on petitioner the motion to dismiss originally filed March 14, 2022 within 7 days. Petitioner's opposition, or statement of non-opposition to the motion, is due within 30 days of service of the motion to dismiss. Petitioner's failure to comply with this

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1 order will result in a recommendation that this action be dismissed. Respondent's reply shall be
2 filed within 21 days of service of petitioner's opposition or statement of non-opposition.

3 2. Petitioner's July 11, 2022 request to file a "sur-reply" is denied.

4 IT IS HEREBY RECOMMENDED that petitioner's March 31, 2022 motion for
5 "summary judgement," which is essentially a motion for entry of default judgement, be denied.

6 These findings and recommendations are submitted to the United States District Judge
7 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
8 after being served with these findings and recommendations, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
11 objections shall be served and filed within fourteen days after service of the objections. The
12 parties are advised that failure to file objections within the specified time may waive the right to
13 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 Dated: August 3, 2022


CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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